

## **REMARKS**

The present Amendment is in response to the Examiner's Office Action mailed July 31, 2007. Claim 16 is cancelled and claims 3-7, 9, 12, 13, 15, and 21 are amended. Claims 1-15 and 17-21 are now pending in view of the above amendments.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicants' remarks are presented in the order in which the corresponding issues were raised in the Office Action.

### **I. GENERAL CONSIDERATIONS**

Applicants respectfully note that the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the patentable distinctions between any cited references and the invention, example embodiments of which are set forth in the claims of this application. Rather, and in consideration of the fact that various factors make it impractical to enumerate all the patentable distinctions between the invention and the cited art, as well as the fact that the Applicants have broad discretion in terms of the identification and consideration of the base(s) upon which the claims distinguish over the cited references, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration by the Applicants, in this case or any other, of additional or alternative distinctions between the invention and the cited references; and/or, the merits of additional or alternative arguments.

With specific reference now to the claim amendments, Applicants note that while claims 3-7, 9, 12, 13, 15, and 21 have been amended herein, such amendments have been made in the interest of expediting the allowance of this case. Notwithstanding, Applicants, may, on further consideration, determine that claims of broader scope than those now presented are supported. Accordingly, Applicants hereby reserve the right to file one or more continuing applications with claims broader in scope than the claims now presented.

Consistent with the points set forth above, Applicants submit that neither the claim amendments set forth herein, nor any other claim amendments or statements advanced by the

Applicants in this or any related case, constitute or should be construed as, an implicit or explicit surrender or disclaimer of claim scope with respect to the cited, or any other, references.

## **II. PRIOR ART REJECTIONS**

### **A. Rejection Under 35 U.S.C. §102(b)**

The Examiner rejected claims 1 and 9 under 35 U.S.C. § 102(b) as being anticipated by *Sharon* (United States Patent No. 6,205,122). Applicants respectfully traverse the rejection.

Applicant respectfully notes that a claim is anticipated under 35 U.S.C. § 102 (b) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further, the identical invention must be shown in as complete detail as is contained in the claim. Finally, the elements must be arranged as required by the claim. *See Manual of Patent Examining Procedure ("MPEP")* § 2131.

Claim 1 recites, among other things: "capturing and storing channelized data with a network analyzer; [and] interleaving the channelized data into a unitary data stream in chronological order." According to the Examiner, "Sharon discloses...interleaving the channelized data into a unitary data stream in chronological order (Col. 8 lines 45-60)." *See Office Action*, p. 3. Applicants respectfully disagree.

The column 8 passage of *Sharon* cited in the Office Action is generally directed to detecting changes in a physical topology map. For example, the passage describes a logical to physical correlation (LPC) process 30 that receives "logical information concerning the flow of packets through [a] network" and compares it to the "physical topology map of the network." *See* col. 8, lines 47-55. "[T]he correlation of the logical and physical topology information...enables changes to the physical topology map to be detected which would otherwise not be detected." *See id.*, lines 58-61. Thus, the passage has no relationship to the concept of "interleaving...channelized data into a unitary data stream in chronological order," as claimed.

Applicants respectfully note that "[i]n rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified." *See* 37

*CFR 1.104* (emphasis added). Therefore, should the Examiner maintain the same ground of rejection, Applicants respectfully request a more detailed explanation of how *Sharon* relates to the aforementioned claim limitation.

In light of the foregoing, Applicants respectfully submit that the Examiner has failed to establish that *Sharon* discloses each and every limitation of claim 1. Accordingly, the rejection of claim 1 should be withdrawn.

Furthermore, Applicants respectfully note that claim 9 was improperly rejected under 35 U.S.C. § 102(b). Claim 9 does not depend from claim 1, but instead depends from claim 7, which was rejected under § 103. Therefore, by implication, § 102(b) cannot be the basis for the claim 9 rejection and the rejection of claim 9 under § 102(b) should be withdrawn.

## B. Rejection Under 35 U.S.C. § 103

### 1. **Claims 2-6, 8, and 16**

The Examiner rejected claims 2, 8, and 16 under 35 U.S.C. § 103 as being unpatentable over *Sharon* in view of *Ikeda* (U.S. Patent Publication No. 2003/0063571) and rejected claims 3-6 under 35 U.S.C. § 103 as being unpatentable over *Sharon* in view of *Ikeda* and further in view of *Warren* (U.S. Patent Publication No. 2004/0081186). Applicants respectfully traverse the rejection.

Applicant respectfully notes at the outset that in order to establish a prima facie case of obviousness, it is the burden of the Examiner to demonstrate that the prior art reference (or references when combined) teaches or suggests all the claim limitations. *See MPEP* § 2143. Moreover, “[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.” *See MPEP* § 2141.

In light of the cancellation of claim 16 the rejection of claim 16 has been rendered moot and should be withdrawn.

Claims 2-6, by virtue of their dependence from claim 1, recite each limitation of claim 1. As discussed above with respect to claim 1, however, *Sharon* does not disclose: “interleaving the channelized data into a unitary data stream in chronological order.” By the same token, *Sharon* also does not teach or suggest this limitation. *Ikeda* and *Warren*, relied on for their purported teachings of the limitations recited in claims 2-6, fail to cure the deficiencies of *Sharon*.

Therefore, no *prima facie* case of obviousness has been established with respect to claims 2-6 and the claim rejections should be withdrawn.

Finally, Applicants respectfully note that claim 8 has not been properly rejected. In particular, the Examiner has provided no explanation here of how the references pertain to the limitations of claim 8. As noted above with respect to claim 1, “[t]he pertinence of each reference, if not apparent, must be clearly explained.” See 37 CFR 1.104. Therefore, the rejection of claim 8 should also be withdrawn.

## **2. Claims 7 and 10-14**

The Examiner rejected claim 7 under 35 U.S.C. § 103 as being unpatentable over *Ikeda* in view of *Pulsipher* (U.S. Patent No. 5,948,055)<sup>1</sup> and rejected claims 10-14 as being unpatentable over *Ikeda* in view of *Pulsipher* and *Warren*. Applicants respectfully traverse each rejection.

Claim 7 recites, among other things: “positioning a plurality of network analyzers in communication with the network; capturing trace data from a first and second channel on each of the analyzers; determining a first topology corresponding to the first channel of each said analyzer; [and] determining a second topology corresponding to the second channel of each said analyzer....”

In contrast, *Ikeda* uses “a route analyzer” to determine a network’s entire topology. See e.g., paragraphs [0035] and [0036] (“Namely, a route analyzer can determine the topology of the entire network....”) (emphasis added). Therefore, *Ikeda* does not teach or suggest “positioning a plurality of network analyzers in communication with the network; capturing trace data from a first and second channel on each of the analyzers; determining a first topology corresponding to the first channel of each said analyzer; [and] determining a second topology corresponding to the second channel of each said analyzer,” as claimed. (Emphasis added.) Moreover, *Pulsipher* and *Warren*, relied on for various other claim limitations, do not remedy the deficiency of *Ikeda*.

Therefore, no *prima facie* case of obviousness has been established with respect to claim 7 and the rejection of claim 7, and corresponding dependent claims 10-14, should be withdrawn.

## **3. Claim 15**

The Examiner rejected claim 15 under 35 U.S.C. § 103 as being unpatentable over *Sharon* in view of *Pulsipher*. Applicants respectfully traverse the rejection.

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<sup>1</sup> The Office Action purported to reject claim 7 “as being unpatentable *Ikeda*...in view of *Warren*,” but instead applied *Ikeda* and *Pulsipher*. See *Office Action*, pp. 7 and 8.

First, the Examiner has not established that the references, whether considered individually or in combination, teach or suggest each and every claim limitation. Second, the Examiner has not articulated any valid reason for combining the references in the purportedly obvious fashion. Each of these points are discussed in turn below.

**a. No Teaching or Suggestion**

Claim 15, as amended, recites, among other things: "capturing a left channel and a right channel data trace from each of the at least one analyzers; combining the left and right channel data traces into a unitary data stream; [and] extrapolating network device presence indicators from the unitary data stream." According to the Examiner, the Abstract of *Sharon* discloses "capturing a left channel and a right channel data trace...[and] extrapolating network device presence indicators from the left and right channel data." *See Office Action*, p. 12. Applicants respectfully disagree.

The Abstract of *Sharon* generally describes automatically detecting a physical network topology using information from a variety of sources such as computers, agents, and bridging tables. The Abstract does not discuss what if any specific channel data traces are captured, much less whether any network device presence indicators are extrapolated from the data traces. Thus, the Abstract has no relationship to the specific claim limitations: "capturing a left channel and a right channel data trace from each of the at least one analyzers...[and] extrapolating network device presence indicators...." Should the Examiner maintain the same ground of rejection, Applicants respectfully request a more detailed explanation of how *Sharon* relates to the aforementioned claim limitations. *See 37 CFR 1.104.*

Furthermore, claim 15 has been amended to incorporate the limitations of now cancelled claim 16. In particular, amended claim 15 recites, among other things: "combining the left and right channel data traces into a unitary data stream." In rejecting claim 16, the Examiner asserted that "Ikeda discloses combining the left and right channel data into a unitary data stream (Abstract). It would have been obvious...to modify Sharon to include [the teachings of Ikeda]...in order to determine the entire network topology." *See Office Action*, p. 5. Applicants respectfully disagree.

The Abstract of *Ikeda* generally describes a network topology collection device and determining a network topology based on "opposed topology information." Thus, the Abstract has no relationship to the specific claim limitation of "combining...left and right channel data

traces into a unitary data stream.” Should the Examiner maintain the same ground of rejection, Applicants respectfully request a more detailed explanation of how *Ikeda* relates to the aforementioned claim limitation. See 37 CFR 1.104.

**b. No Valid Reason for Combining the References**

The Examiner has not established that the network analyzing method disclosed in *Sharon* suffers from such shortcomings as could, or would, be remedied by use of the *Ikeda* disclosure. In the absence of any evidence that the *Sharon* method is somehow deficient in terms of determining an “entire network topology,” Applicants submit that no valid reason exists for combining *Sharon* and *Ikeda* in the purportedly obvious fashion. Therefore, the Examiner has failed to provide the requisite “clear articulation of the reason(s) why the claimed invention would have been obvious.”

For each of the foregoing reasons, Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 15. Accordingly, the rejection of claim 15 should be withdrawn.

**4. Claim 8**

The Examiner rejected claim 8 under 35 U.S.C. § 103 as being unpatentable over *Ikeda* (U.S. Patent Publication No. 2003/0063571) in view of *Sharon* (U.S. Patent No. 6,205,122). Applicants respectfully traverse the rejection.

Claim 8, by virtue of its dependence from claim 7, recites each limitation of claim 7. As discussed above with respect to claim 7, however, *Ikeda* does not teach or suggest “positioning a plurality of network analyzers...determining a first topology corresponding to the first channel of each said analyzer; [and] determining a second topology corresponding to the second channel of each said analyzer,” as claimed. *Sharon*, relied on for its purported teaching of the limitations recited in claim 8, fails to cure the deficiencies of *Ikeda*. Therefore, no *prima facie* case of obviousness has been established with respect to claim 8 and the claim rejection should be withdrawn.

**5. Claims 18-21**

The Examiner rejected claim 18-21 under 35 U.S.C. § 103 as being unpatentable over *Sharon* in view of *Ikeda*, *Pulsipher*, and *Warren*. Applicants respectfully traverse the rejection.

Claims 18-21, by virtue of their dependence from claim 15, recite each limitation of claim 15. As discussed above, however, the Examiner has not established a *prima facie* case of

obviousness with respect to claim 15. *Warren*, relied on for its purported teachings of the limitations recited in claims 18-21, fails to cure the deficiencies of the claim 15 rejection. Therefore, no *prima facie* case of obviousness has been established with respect to claims 18-21 and the claim rejection should be withdrawn.

**CONCLUSION**

In view of the foregoing, Applicants believe the claims as amended are in allowable form. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorney.

Dated this 11th of January, 2008.

Respectfully submitted,

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